

Chapter 142.

*Associations Incorporation Act 1966.*

Certified on: / /20 .



INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 142.

***Associations Incorporation Act 1966.***

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**SCHEDULE 1 – Matters to be Provided for in the Rules of an Association.**

# INDEPENDENT STATE OF PAPUA NEW GUINEA.



## AN ACT

entitled

### *Associations Incorporation Act 1966,*

Being an Act to provide for the incorporation of certain associations, and for related matters.

#### 1. INTERPRETATION.

(1) In this Act, unless the contrary intention appears—

“address” includes residential address and postal address;

“applicant for incorporation” means the person by whom a notice under Section 2 is given;

“association” means an association, society, club, institution, Christian mission or other body in the country;

“committee”, in relation to an association, means the committee of the association or, if there is no committee, the persons (however styled) who have the management of the affairs of the association;

“incorporated association” means an association incorporated under this Act;

“model rules” means the model rules prescribed under Section 15, as in force for the time being;

“objector” means a person who objects under Section 4 to the incorporation of an association under this Act;

“the prescribed qualifications for incorporation” in relation to an association, means—

(a) that the association—

- (i) is formed; or
- (ii) is being formed; or
- (iii) is operating,

for the purpose of—

- (iv) providing recreation or amusement; or
- (v) promoting commerce, industry, art, science, religion, charity, pension or superannuation schemes or other objects useful to the community; and
- (b) that the association will apply its profits (if any) or other income in promoting its objects; and
- (c) that the association will prohibit the payment of any dividend or payment in the nature of a dividend to its members;

**“public officer”**, in relation to an incorporated association, means the public officer of the association appointed under Section 13;

**“the Registrar”** has the same meaning as in the *Companies Act 1997*;

**“the regulations”** means any regulations made under this Act;

**“special resolution”** means a special resolution as defined in Section 22;

**“this Act”** includes the regulations.

(2) A reference in this Act to the rules of an association includes a reference—

- (a) to the constitution, regulations and by-laws (if any) of the association; and
- (b) if the association has adopted the model rules with or without modification—to the model rules as adopted.

## 2. NOTICE OF INTENTION TO APPLY FOR INCORPORATION OF ASSOCIATION.

(1) Where the committee of an association authorizes a person to apply for the incorporation of the association under this Act, that person may, by notice in a newspaper published in and circulating generally throughout the country not less frequently than once a week, give notice that he intends to apply for the incorporation of the association under this Act.

(2) A notice under Subsection (1) shall—

- (a) be in the prescribed form; and
- (b) give details of the prescribed qualifications for incorporation of the association; and
- (c) be submitted to and approved by the Registrar before publication; and
- (d) contain the name and address of the person by whom it is given; and
- (e) contain such other particulars as the Registrar directs.

(3) Where for any special reason it seems desirable to do so, the Registrar may direct the manner of publication for the purposes of this section.

(4) A person referred to in Subsection (1) may appeal to the Minister against the refusal of approval or any direction given under this section.

(5) The decision of the Minister on an appeal under Subsection (4) is final.

### **3. POWER TO TAKE STEPS TO INCORPORATE AN ASSOCIATION.**

The committee of, and persons who are members of, or interested in, an association that it is proposed to incorporate under this Act may do all acts and things necessary or convenient for securing that incorporation.

### **4. OBJECTION TO INCORPORATION.**

(1) A person may by written notice lodged with the Registrar, within one month after the publication of a notice under Section 2, object to the incorporation of the association to which that last-mentioned notice relates on any of the following grounds:—

- (a) that the applicant for incorporation is not authorized by the committee of the association to make application for the incorporation of the association;
- (b) that the association does not have the prescribed qualifications for incorporation;
- (c) that the association was formed or is carried on, or is proposed to be incorporated, for an immoral or illegal purpose or a purpose contrary to public policy;
- (d) that the rules of the association do not comply with the provisions of this Act;
- (e) that the name of the association is not acceptable under Section 8;
- (f) that notice of intention to apply for the incorporation of the association was not duly published under Section 2.

(2) A notice of objection under this section shall set out fully—

- (a) the grounds of the objection; and
- (b) the name, address and occupation of the person by whom the objection is made.

(3) On receipt of a notice of objection under this section, the Registrar shall give the applicant for incorporation a written notification—

- (a) stating that an objection has been received; and
- (b) setting out the grounds of the objection and the name, address and occupation of the objector; and
- (c) specifying a time within which the applicant for incorporation may make representations to the Registrar in relation to the objection.

(4) The Registrar shall—

- (a) consider the objection and representations and decide whether, in his opinion, an application for incorporation should be accepted for determination; and

- (b) give written notice of his decision to the objector and to the applicant for incorporation.

## 5. APPEAL FROM DECISION OF REGISTRAR.

(1) Subject to this section, if the objector or the applicant for incorporation is dissatisfied with the decision of the Registrar under Section 4, he may appeal against that decision to a Principal Magistrate.

- (2) Where an appeal under this section is brought—

- (a) by the objector, the applicant for incorporation shall be joined as a party to the appeal; or
- (b) by the applicant, the objector shall be joined as a party to the appeal.

- (3) An appeal under this section—

- (a) shall be made within 28 days after the receipt by the appellant of notice of the decision in respect of which the appeal is brought or such extended time as a Principal Magistrate allows; and
- (b) shall be instituted by written notice of appeal, setting out the grounds of the appeal and served on, or sent by registered post to—
  - (i) the Clerk of the District Court for the area in which the appeal is to be heard; and
  - (ii) the Registrar; and
  - (iii) any person who is required by Subsection (2) to be joined as a party to the appeal.

(4) Subject to the preceding provisions of this section, an appeal under this section shall be instituted, heard and determined as prescribed.

(5) On the determination of an appeal under this section, the Magistrate by whom the appeal is heard shall, by order, determine whether or not the objection should be upheld.

(6) The determination of a Magistrate on the hearing of an appeal under this section is final.

(7) An appeal does not lie under this section against a decision of the Registrar as to whether an association should or should not be incorporated under a particular name or under a name of a particular kind.

## 6. APPLICATION FOR INCORPORATION.

(1) Subject to any decision of a Magistrate on the hearing of an appeal under Section 5, an applicant for incorporation, or some other person authorized for the purpose by the committee of the association concerned, may, after the expiration of a period of one month and within a period of six months after the publication of the notice, apply in writing to the Registrar, in the prescribed form, for the incorporation of the association.

- (2) An application under Subsection (1) shall specify—

- (a) the name of the association; and
- (b) the objects and purposes of the association; and
- (c) the place or places where the association was formed and is carried on; and
- (d) the full name, address and occupation of the applicant.

(3) An application under Subsection (1) shall be accompanied by a statutory declaration made by the applicant declaring—

- (a) that he is authorized by the committee of the association to apply for the incorporation of the association under this Act; and
- (b) that, on a date and in a newspaper specified in the declaration, notice was given under Section 2 of intention to apply for the incorporation of the association; and
- (c) that the particulars contained in the application are true.

(4) An application under Subsection (1) shall be accompanied by—

- (a) a copy of the rules and any trusts relating to the association, and, if the rules or trusts are embodied in a deed, a copy of the deed; or
- (b) if the association has adopted the model rules with or without modification, a statement signed by the applicant specifying—
  - (i) the date of the meeting at which the model rules were adopted; and
  - (ii) a copy of the special resolution for the adoption of the model rules; and
  - (iii) the modifications (if any) subject to which the model rules were adopted by the association.

(5) The copy of any rules, trusts or deed accompanying an application under Subsection (1) shall be verified as a true copy by a statutory declaration made by the applicant.

## 7. INCORPORATION.

On receipt of an application under Section 6 the Registrar may, if he is satisfied that it is proper for him to do so, grant to the association a certificate of incorporation in the prescribed form.

## 8. NAMES OF ASSOCIATIONS.

(1) Except with the consent of the Minister, the Registrar shall not grant to an association a certificate of incorporation under a name that, in the opinion of the Registrar, is undesirable or is a name, or a name of a kind, that the Minister has directed the Registrar not to accept for registration.

(2) The Minister shall cause a direction given by him under Subsection (1) to be published in the National Gazette.

(3) An incorporated association shall have the word "Incorporated" or the abbreviation "Inc." as part of and at the end of its name.

(4) It is sufficient if the abbreviation "Inc." is used in place of the word "Incorporated"—

- (a) in the name of the association as appearing on its seal; or
- (b) when the name of an incorporated association is included in any document.

## 9. CHANGE OF NAME.

(1) By special resolution and with the approval of the Registrar, an incorporated association may change its name to any other name by which it could be incorporated.

(2) An application for the approval of the Registrar to a change of name under this section—

- (a) shall be in the prescribed form; and
- (b) shall be verified as prescribed; and
- (c) shall be made by the public officer of the association within the prescribed period after the date of the meeting at which the special resolution for the change of name was passed; and
- (d) shall be lodged with the Registrar, together with such other documents (if any) as are prescribed.

(3) The Registrar shall register the change of name and—

- (a) note the change on the certificate of incorporation; or
- (b) issue a new certificate of incorporation in the prescribed form.

(4) The public officer of an incorporated association that changes its name who fails to notify, within 14 days after receiving notice of the registration of the change of name, the change in a newspaper published and circulating in the country not less frequently than once a week is guilty of an offence.

Penalty: A fine not exceeding K20.00.

Default penalty: A fine not exceeding K2.00.

(5) A change of name does not—

- (a) affect the identity of an association; or
- (b) affect any right or obligation of an association or of any member or other person; or
- (c) render defective any legal proceedings by or against an association,

and any legal proceedings that might have been continued or commenced by or against an association under its former name may be continued or commenced by or against it under its new name.

**10. EFFECT OF INCORPORATION.**

(1) On the grant of a certificate of incorporation to an association under Section 7, the association—

- (a) is a corporation with perpetual succession and a common seal; and
- (b) may acquire, hold and dispose of property; and
- (c) is capable of suing and being sued in its corporate name.

(2) The common seal of an incorporated association shall have the name of the association inscribed on the seal in legible characters.

(3) All courts, Judges and persons acting judicially shall take judicial notice of the seal of an incorporated association affixed to a document, and shall presume that it was duly affixed.

**11. POWER TO HOLD PROPERTY, ETC.**

(1) If its rules do not direct otherwise, an incorporated association may, in its corporate name—

- (a) hold, purchase or take on lease any land; and
- (b) sell, exchange, mortgage, lease or build on the land (with power to alter and pull down buildings and rebuild); and
- (c) otherwise deal with the land as fully and effectually as a natural person could do.

(2) The receipt of an incorporated association is a discharge for any moneys arising from or in connection with any sale, exchange, mortgage or lease referred to in Subsection (1).

**12. VESTING OF PROPERTY.**

(1) On the incorporation of an association under this Act, any property held by a person, in trust or otherwise, for or on behalf of the association is vested in the association, subject to any trust, covenant, contract or liability affecting the property.

(2) Where any property vested in the corporation under this section is land registered under the *Real Property Act* 1913 of the former Territory of Papua (Adopted) or the *Lands Registration Act* 1924 of the former Territory of New Guinea (Adopted), the Registrar of Titles shall without formal transfer and without fee, on application by the corporation, enter or register the corporation in the appropriate register and on the grant, certificate of title, lease or other instrument evidencing title to the land as the owner of the land within the meaning of that Act.

**13. PUBLIC OFFICER.**

(1) The committee of an incorporated association must, within 14 days after the incorporation of the association under this Act, appoint a natural person who ordinarily resides in the country to be the public officer of the association and, if the office becomes

vacant, must, within 14 days after it becomes vacant, appoint a natural person who ordinarily resides in the country to fill that vacancy.

(2) If the committee of an incorporated association fails to comply with Subsection (1), the association is guilty of an offence.

**Penalty:** A fine not exceeding K20.00.

**Default penalty:** A fine not exceeding K2.00.

(3) The public officer of an incorporated association may, unless the rules of the association otherwise provide, hold any other office in the association except the office of auditor.

(4) Notwithstanding that the rules of an incorporated association do not make provision for the appointment of a public officer, the association has, by virtue of this Act, power from time to time to appoint a public officer and to remove any person so appointed from his office as public officer.

(5) The office of public officer of an incorporated association becomes vacant if the person holding that office—

- (a) dies; or
- (b) becomes bankrupt, or applies to take or takes advantage of any law relating to bankrupt or insolvent debtors or compounds with his creditors, or makes any assignment of his estate for their benefit; or
- (c) becomes of unsound mind; or
- (d) resigns his office by writing under his hand addressed to the committee of the association; or
- (e) ceases ordinarily to reside in the country; or
- (f) is removed from office.

(6) Notwithstanding the preceding provisions of this section, until such time as a person is appointed under this section to be the public officer of an incorporated association, the applicant for the incorporation of the association, shall be deemed, for the purposes of this Act, other than of Section 14(a), to be the public officer of the association.

#### **14. NOTIFICATION OF APPOINTMENT, ETC., OF PUBLIC OFFICER.**

A public officer who fails—

- (a) within 14 days of his appointment as public officer; or
- (b) within 14 days after the change of his address,

to notify the Registrar of his appointment and his full name, address and occupation, or of the change of address, as the case may be, is guilty of an offence.

**Penalty:** A fine not exceeding K40.00.

**Default penalty:** A fine not exceeding K5.00.

**15. MODEL RULES.**

(1) The regulations may prescribe model rules for associations incorporated or desiring to become incorporated under this Act.

(2) An association that is proposed to be or is incorporated under this Act, may, by special resolution, adopt as its rules all or any of the model rules, or may adopt the model rules subject to modifications specified in the resolution.

(3) Where an association is incorporated under this Act, in so far as any rules lodged under Section 6(4) are not inconsistent with or do not exclude or modify the model rules as then in force the model rules shall be deemed to form part of the rules of the association in the same manner and to the same extent as if they were contained in the rules lodged under Section 6(4).

(4) An alteration of the model rules does not apply to an association that is incorporated before the regulation prescribing the alteration comes into operation, unless the association, by special resolution, adopts the alteration as part of its rules.

**16. RULES OF AN INCORPORATED ASSOCIATION.**

(1) The Registrar shall not grant to an association that has not adopted the model rules without modification a certificate of incorporation under this Act if he is of the opinion that the rules of the association lodged under Section 6(4) do not comply with this Act.

(2) To comply with this Act, the rules of an association must provide for or with respect to—

- (a) the several matters specified in Schedule 1; and
- (b) such other matters (if any) as are prescribed.

**17. ALTERATION OF RULES, OBJECTS, ETC.**

(1) The rules of an incorporated association may be altered by special resolution.

(2) The public officer of an incorporated association must, within one month after—

- (a) any alteration of the rules of the association; or
- (b) any alteration of the objects or purposes of the association; or
- (c) any alteration of any trusts relating to the association (including the creation of new trusts),

lodge with the Registrar—

- (d) notice of the alteration; and
- (e) a copy of any instrument evidencing the alteration; and
- (f) a statutory declaration made by the public officer declaring—
  - (i) that the copy is a true copy of the instrument of which it purports to be a copy; and

(ii) in the case of an alteration of the objects or purposes of the association, that the alteration is authorized, and was made in the manner provided, by the rules of the association.

(3) Where, under the rules of an incorporated association, the members of the association are liable to contribute towards—

- (a) the payments of the debts and liabilities of the association; or
- (b) the costs, charges and expenses of the winding-up of the association,

and an alteration of the rules of the association affects that liability, the public officer of the association must, within one month after the alteration, give notice of the alteration in a newspaper published in and circulating generally throughout the country not less frequently than once a week.

(4) An alteration of the rules, objects or purposes of an association, or of any trusts relating to an association (including the creation of new trusts), is of no effect until Subsections (2) and (3) have been complied with in respect of the alteration and the alteration is approved by the Registrar.

(5) In the case of the alteration of the rules of an association, a notice under Subsection (2) must be accompanied by a copy of the special resolution by which the alteration was authorized.

(6) A public officer of an incorporated association who fails to comply with the provisions of Subsection (2), (3) or (5) is guilty of an offence.

**Penalty:** A fine not exceeding K40.00.

**Default penalty:** A fine not exceeding K5.00.

## **18. OBLIGATIONS, ETC. NOT AFFECTED BY ALTERATION OF RULES, ETC.**

An alteration of the rules, objects or purposes of an incorporated association does not affect any right, liability or obligation of the association or of any person, or any legal proceedings, existing or pending immediately before the alteration takes effect.

## **19. CONTRACTS.**

Contracts on behalf of an incorporated association may be made as follows:—

- (a) a contract that, if made between natural persons, would be by law required to be in writing under seal may be made on behalf of the association in writing under the common seal of the association;
- (b) a contract that, if made between natural persons, would be by law required to be in writing and signed by the parties to be charged, may be made on behalf of the association in writing signed by a person acting under its authority, express or implied;
- (c) a contract that, if made between natural persons, would by law be valid although made orally only (and not reduced into writing) may be made orally on behalf of the association by a person acting under its authority, express or implied,

and a contract so made is effectual in law and binds the association and its successors and all other parties, and may be varied or discharged in the manner in which it is authorized to be made.

## 20. GENERAL POWERS OF INCORPORATED ASSOCIATIONS.

Subject to this Act, and to any special restrictions or prohibitions in its rules or trust deed, and without prejudice to any other powers contained in its rules or trust deed or implied by law, an incorporated association has power, by virtue of this Act—

- (a) to act as trustee for any other association which has the prescribed qualifications for incorporation; and
- (b) to accept and hold on trust any property that is given to the association subject to any trust, and to carry out any such trust; and
- (c) to invest its moneys in or on any security in which trustees are for the time being authorized by law to invest trust funds; and
- (d) to open and operate on bank accounts; and
- (e) to borrow money on such terms and in such manner and on such security (if any) as the association thinks proper, for the purpose of carrying out its objects and purposes; and
- (f) to secure the repayment of money so raised or borrowed, or the payment of a debt or liability of the association, by giving a mortgage, charge or security on or over all or any of the property of the association.

## 21. DISPOSAL OF PROPERTY.

(1) Where property is held by an incorporated association on trust, then notwithstanding that the deed or other instrument creating the trust or the rules of the association do not contain any power to dispose of the property, or forbid any such transaction, any person who is authorized to do so by the committee of the association may make application to a Judge for an order authorizing the disposal of the whole or any portion of the property—

- (a) where the trusts on which it is held have—
  - (i) come wholly or partially to an end; or
  - (ii) become unduly onerous; or
- (b) where for any other reason disposal appears proper.

(2) On an application under this section, the Judge may make an order authorizing the disposal of the property to which the application relates and directing the manner in which the proceeds arising from the disposal of the property shall be disposed of.

(3) On the making of an order under this section the association may, subject to and in accordance with the terms of the order, dispose of the property freed from all trusts to which it was subject.

**22. SPECIAL RESOLUTION.**

(1) For the purposes of this Act, a resolution is a special resolution if it is passed by a majority of not less than 75% of the members who, being entitled to do so, vote in person (or, where proxies are allowed, by proxy) at a general meeting of which not less than 21 days' notice, specifying the intention to propose the resolution as a special resolution, has been duly given.

(2) At a general meeting to which Subsection (1) relates, unless a poll is demanded a declaration by the chairman that the resolution has been carried is conclusive evidence of that fact.

(3) Notice of the passing of a special resolution must be lodged by the public officer with the Registrar, as prescribed, within a period of one month after the passing of the resolution, and thereupon the resolution shall be registered by the Registrar and, until registered, does not take effect.

(4) A notice under Subsection (3)–

- (a) must be signed by the public officer; and
- (b) must be accompanied by such other documents (including a copy of the special resolution) as are prescribed, signed or verified as prescribed.

(5) A public officer of an incorporated association who fails to comply with the provisions of this section is guilty of an offence.

Penalty: A fine not exceeding K20.00.

Default penalty: A fine not exceeding K2.00.

**23. AUDIT AND ACCOUNTS.**

(1) The committee of an incorporated association must, at least once in each 12 months, or more frequently if the rules of the association so provide, cause the financial affairs of the association to be properly audited by a competent person who is not–

- (a) the public officer; or
- (b) a member of the committee of the association.

(2) If the committee of an association fails to comply with Subsection (1), the association is guilty of an offence.

Penalty: A fine not exceeding K20.00.

**24. AMALGAMATION OF ASSOCIATIONS.**

(1) Two or more incorporated associations may, by special resolution of each of them, amalgamate and become one association, with or without a dissolution or a division of funds.

(2) Where two or more incorporated associations pass special resolutions for their amalgamation, the public officer of each association must lodge with the Registrar notice in the prescribed form of the passing of the resolution, and of the name of the association to be created by the amalgamation.

(3) A notice under Subsection (2) must be accompanied by such documents (if any) as are prescribed, verified as prescribed.

(4) On receipt of a notice under Subsection (2), if the Registrar is satisfied that the association to be created by the amalgamation could be incorporated under the name set out in the notice without contravention of this Act, he may issue a certificate of incorporation of the association.

(5) On the issue of a certificate of incorporation under Subsection (4), all the property of the amalgamating associations vests in the association created by the amalgamation, and Section 12, with the necessary adaptations, applies to and in relation to the property.

(6) Within 14 days after the issue of a certificate of incorporation under Subsection (4) the public officer of each association must notify the amalgamation in a newspaper published in and circulating generally throughout the country not less frequently than once a week.

Penalty: A fine not exceeding K20.00.

Default penalty: A fine not exceeding K2.00.

(7) The amalgamation of incorporated associations does not prejudice any right of a creditor or of any person having a claim against any of the amalgamating associations, and any such right or claim may be enforced against the association created by the amalgamation.

(8) A public officer of an incorporated association who fails to comply with the provisions of Subsection (2) or (3) is guilty of an offence.

Penalty: A fine not exceeding K20.00.

Default penalty: A fine not exceeding K2.00.

## **25. NAME OF INCORPORATED ASSOCIATION TO APPEAR ON DOCUMENTS.**

An incorporated association must cause each notice, advertisement, bill of exchange, cheque, promissory note, endorsement, order, receipt or other document given, published, drawn, endorsed or issued by it to contain the name of the association in a conspicuous place and in letters easily legible.

Penalty: A fine not exceeding K40.00.

## **26. LIABILITY OF MEMBERS.**

A member of an incorporated association is not liable, except as provided in the rules of the association, to contribute towards the payment of the debts and liabilities of the association or the costs, charges and expenses of the winding-up of the association.

## **27. SERVICE OF NOTICES.**

(1) A notice, demand, summons, writ or other document or process may be served on an incorporated association by serving it personally on the public officer of the

association or by sending it by post to him at his usual or last-known place of abode or business.

(2) An incorporated association may give a notice or make a demand by writing under the hand of the public officer.

## 28. INSPECTION OF DOCUMENTS.

A person may, on payment of the prescribed fee—

- (a) inspect the documents kept by the Registrar relating to incorporated associations; and
- (b) require—
  - (i) a certificate of the incorporation of an association; or
  - (ii) any other certificate issued under this Act; or
  - (iii) a copy of or extract from any other document or any part of any other document kept by the Registrar.

## 29. EVIDENTIARY PROVISIONS.

(1) The Registrar may, by writing under his hand, certify that, on a date specified in the certificate—

- (a) a specified association was, or was not, an incorporated association; or
- (b) a specified person was, or was not, the public officer of a specified incorporated association,

and such a certificate is, in all courts and before all persons acting judicially and for all purposes, evidence of the matters stated in the certificate.

(2) In any legal proceedings, a copy of any rules or trusts of an incorporated association, certified by the Registrar to be a true copy, is evidence that the rules or trusts were rules or trusts, as the case may be, of the association, and were in force on the date specified.

(3) Judicial notice shall be taken of the signature of the Registrar appearing on a certificate under this section and of the fact that the person by whom the certificate purports to have been signed is the Registrar.

## 30. EXTENSION OF TIME.

(1) Subject to Subsection (2), where by or under this Act an act or thing is required to be performed or done within a specified time, the Registrar may, in special circumstances, extend the time for the performance or doing of that act or thing.

(2) Subsection (1) does not authorize the Registrar to extend the time for the making of an appeal under Section 5.

### 31. WINDING-UP.

(1) Subject to Section 32, the provisions of the *Companies Act 1997* relating to the winding-up of unregistered companies apply, so far as they are applicable and with the prescribed modifications (if any), to and in relation to the winding-up of incorporated associations.

(2) In the application of the provisions of the *Companies Act 1997* under Subsection (1) to the winding-up of an incorporated association a reference in those provisions—

- (a) to an unregistered company shall be read as a reference to an incorporated association; and
- (b) to the directors of a company shall be read as a reference to the members of the committee of an incorporated association; and
- (c) to the secretary of a company shall be read as a reference to the public officer of an incorporated association; and
- (d) to the principal place of business of a company shall be read as a reference to the address of the public officer of an incorporated association as notified under Section 14.

### 32. DISTRIBUTION OF SURPLUS ASSETS.

(1) In this section—

**“surplus assets”** means the assets of an incorporated association remaining on the winding-up of the association after payment of the debts and liabilities of the association and the costs, charges and expenses of the winding-up.

(2) Where, on the winding-up of an incorporated association, a resolution relating to the distribution of the surplus assets of the association has been passed by a majority of at least two-thirds of the members of the association, the National Court shall, subject to Subsection (3), make an order for the distribution of those assets in accordance with the resolution.

(3) Where—

- (a) the National Court considers that a distribution of the surplus assets of an incorporated association in accordance with a resolution of a kind referred to in Subsection (2) would not be just; or
- (b) such a resolution has not been passed,

the Court shall make such order for the distribution of those assets as, having regard to the objects and purposes of the association being wound up, it considers just.

### 33. INSPECTION OF BOOKS, ETC.

(1) The Registrar or an officer authorized by him may at any time inspect books or papers of or under the control of an association.

(2) For the purpose of Subsection (1), the Registrar may, by written notice to the public officer of an association, require him to produce the books or papers specified in the notice to a person at a time and place named in the notice.

(3) A public officer referred to in Subsection (2) who, without reasonable excuse (proof of which is on him), refuses or fails to comply with a requirement referred to in that subsection is guilty of an offence.

Penalty: A fine not exceeding K40.00.

Default penalty: A fine not exceeding K5.00.

#### **34. CANCELLATION OF INCORPORATION.**

(1) Where the Registrar has reasonable cause to believe that an incorporated association has ceased to exist or that the transactions or nature of an incorporated association are or is such that it has not, or has ceased to have, the prescribed qualifications for incorporation, the Registrar may send by registered post to the person appearing by any notice lodged in the office of the Registrar to be the public officer of the association, a notice—

- (a) requiring him, within a period of one month from the date of the notice, to satisfy the Registrar that—
  - (i) the association has not ceased to exist; or
  - (ii) the transactions or nature of the association are or is not such that the association has not, or has ceased to have, the prescribed qualifications for incorporation, as the case may be; and
- (b) stating that, unless cause is shown to the contrary within that period, a notice will be published in the National Gazette with a view to the cancellation of the incorporation of the association.

(2) If cause is not shown as provided in Subsection (1) within the time specified in that subsection, the Registrar may publish in the National Gazette and send by registered post to the person appearing to be the public officer of the association a notice that, at the expiration of three months from the date of the publication of the notice, the incorporation of the association will, unless cause is shown to the contrary, be cancelled.

(3) At the expiration of the time specified in the notice given by the Registrar under Subsection (2), he may, unless cause to the contrary is previously shown, cancel the incorporation of the association and publish notice of the cancellation in the National Gazette.

#### **35. APPEAL AGAINST CANCELLATION OF INCORPORATION.**

(1) The public officer of an association, or a creditor or member of an association, the incorporation of which is cancelled under Section 34 may, within three months after the cancellation, appeal, as prescribed, to a Principal Magistrate against the cancellation.

(2) If the Magistrate, is satisfied that the association has not ceased to exist or that the transactions or nature of the association are such that it has, or has not ceased to have, the prescribed qualifications for incorporation, as the case may be, and that it is

just to do so, he may order that the incorporation be restored, and the incorporation continues as if it had never been cancelled.

(3) Subject to Subsection (1), an appeal under this section shall be instituted, heard and determined as prescribed.

(4) The determination of a Magistrate on the hearing of an appeal under this section is final.

### **36. INAPPROPRIATE INCORPORATIONS.**

(1) Notwithstanding the preceding provisions of this Act, the Registrar may—

(a) reject an application for the incorporation of an association under this Act;

or

(b) cancel the incorporation of an association under this Act,

on the ground that it would be more appropriate for the association to be incorporated under the *Companies Act 1997*.

(2) Before an application is rejected or the incorporation of an association is cancelled under Subsection (1), the Registrar shall give the applicant or the association, as the case requires, written notice of his intention and afford it an opportunity to be heard.

(3) A person aggrieved by a decision of the Registrar under this section may appeal to the Minister whose decision is final.

(4) Where the incorporation of an association is cancelled under this section, the Registrar shall publish notice of the cancellation in the National Gazette.

### **37. LIABILITY OF ASSOCIATION ON CANCELLATION OF INCORPORATION.**

(1) Notwithstanding the cancellation, under Section 34 or 36, of the incorporation of an association, the association is liable to be sued and proceeded against as a corporation, and all dealings and transactions between the association and any person are valid against the association and all persons claiming under the association without notice of the cancellation.

(2) Immediately after the cancellation of the incorporation of an association, the Registrar shall give notice of the cancellation to the Registrar of Titles, and after such notice the Registrar of Titles shall not register any dealings in respect of any land or interest in land vested in the association unless he is satisfied, by such evidence as he thinks proper, that the persons claiming to execute any document on behalf of the association are authorized by the association to do so and that the dealing is valid under Subsection (1).

(3) Notwithstanding Subsections (1) and (2), any dealing, transaction or proceeding by, with or against an association, the incorporation of which has been cancelled under this Act, are as valid and effectual as if the association had not been incorporated.

### **38. SPECIAL CASES.**

(1) Where the Registrar is satisfied that, because of the special nature of the constitution, method of control or operations of an association proposed to be incorporated under this Act it would be appropriate and not inconsistent with the intention of this Act to do so, he may—

- (a) direct that some officer or authority of the association be incorporated in its place; or
- (b) direct that, on incorporation, the association, or some officer or authority of the association, stand, for the purposes of this Act, in the place of the committee, the members of the committee, the general meeting or the public officer; or
- (c) give such directions as he considers appropriate as to the form and manner of doing any other matter or thing under or for the purposes of this Act, and the person or authority by whom or by which it is to be done (including the substitution of some other instrument or procedure for a special resolution); or
- (d) approve the constitution of the association and waive some or all of the provisions of this Act relating to the constitution and rules of associations,

and shall give such further directions to ensure compliance with the intention of this Act as he considers proper.

(2) A person aggrieved by a direction or approval under Subsection (1) may appeal to the Minister, whose decision is final.

(3) Subject to Subsections (1) and (2), the provisions of this Act relating to and in relation to incorporated associations, with the necessary modifications, apply to and in relation to a corporation constituted in accordance with this section.

### **39. REGULATIONS.**

(1) The Head of State, acting on advice, may make regulations, not inconsistent with this Act, prescribing all matters that by this Act are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Act, and in particular for—

- (a) prescribing the manner in which, and the persons by whom, and the directions or requirements in accordance with which, any forms prescribed for the purposes of this Act shall or may be signed, prepared or completed, and generally regulating the signing, preparation and completion of any of them; and
- (b) prescribing the times for the lodging of documents with, or the transmission of documents to, the Registrar; and
- (c) prescribing the fees to be paid for or in respect of any matter or thing done under this Act; and
- (d) imposing penalties of fines not exceeding K40.00 for offences against the regulations.

(2) The regulations may require that, in the prescribed cases, documents required by or under this Act to be lodged with the Registrar must be verified by statutory declaration by the prescribed persons.

**SCHEDELE 1 – MATTERS TO BE PROVIDED FOR IN THE RULES OF AN ASSOCIATION.**

Sec. 16.

1. The name of the association.
2. The objects and purposes of the association.
3. The qualifications (if any) for membership of the association.
4. The donations or subscriptions (if any) to be made or paid by members of the association.
5. The names, constitution, membership and powers of the general committee, board of management or other governing authority of the association (in this item referred to as “the committee”) and–
  - (a) the election or appointment of members of the committee; and
  - (b) the terms of office of members of the committee; and
  - (c) the grounds on which, or reasons for which the office of a member of the committee becomes vacant; and
  - (d) the filling of casual vacancies occurring on the committee; and
  - (e) the quorum and procedure at meetings of the committee; and
  - (f) the quorum and procedure at meetings of sub-committees appointed by the committee.
6. The quorum and procedure at general meetings of members of the association and of sub-committees appointed by any such meeting or constituted or established under the rules of the association.
7. The time within which, and the manner in which, notices of meetings and notices of motion are to be given, published or circulated.
8. The sources from which the funds of the association are to be or may be derived.
9. The manner in which the funds of the association are to be managed and, in particular, the mode of drawing and signing cheques, drafts, bills of exchange, promissory notes and other documents for and on behalf of the association.
10. The intervals between general meetings of members of the association, the manner of calling general and special meetings and the requisite notices of meetings of the association.
11. Whether the accounts of the association are to be audited annually or more frequently, the manner of appointing and removing auditors and the powers and duties of auditors.
12. The manner of altering and rescinding the rules and of making additional rules.
13. Provision for the custody and use of the seal of the association.
14. The manner in which the objects or purposes of the association may be altered.
15. The form, custody and use of the common seal of the association.

**16. The custody of books, documents and securities of the association.**

Office of Legislative Counsel, PNG